

Appl. No. 09/991,324  
Response dated 12/3/2009  
Reply to Office Action of 05/26/09

### **REMARKS/ARGUMENTS**

Claims 90, 98, 103, 106 – 117, and 118 - 122 are pending in the present application with claims 90, 98, 103, 114, 115, and 118 being independent. Applicant has herein cancelled claims 90, 98, 103, 108, 111, 114, 115, and 117. Applicant has added claims 123 – 127, with claim 123 being independent and claims 124 – 127 being dependent. Support for these amendments may be found in at least paragraphs 0038 – 0063 and 0072 – 0083.

For at least the reasons stated herein, Applicant asserts that the claims as presented are patentable over the cited prior art and are therefore in condition for allowance. If Examiner agrees but does not feel that the present claims are technically adequate, Applicant gratefully requests that the Examiner write acceptable claims pursuant to MPEP 707.07(j).

#### **Claim Objections**

Examiner has objected to claims 103, 111, and 118-122 because of informalities. Applicant has cancelled claims 103 and 111 and amended claims 118 – 122 which respectfully renders Examiner's object moot.

#### **Claim Rejections under 35 U.S.C. §103(a)**

The Examiner has rejected claims 118 – 122 under 35 U.S.C. §103(a) as unpatentable over U.S. Patent No. 7,243,079 for Manolis et al. ("Manolis") in view of U.S. Patent No. 7,010,751 for Shneiderman ("Shneiderman").

Per Claim 118, Applicant respectfully requests the Examiner to reconsider its rejection in light of the following four arguments:

1. The combination of Manolis and Shneiderman does not disclose every element of the present invention.
2. Any combination of the teachings of Manolis and Shneiderman would be inoperative.
3. Manolis in view of Shneiderman does not meet the requirements for a prima facie case of obviousness, under Section 103 MPEP 2142.

Appl. No. 09/991,324  
Response dated 12/3/2009  
Reply to Office Action of 05/26/09

4. In light of the commercial success demonstrated by embodiments of the present invention, the failure of other to successfully combine Manolis of Shneiderman argues against the obviousness of such combination.

**Argument 1:** The combination of Manolis and Shneiderman does not disclose every element of the present invention.

In the last O.A. Examiner has acknowledged that Manolis does not distinctly disclose Claim 118, Element D: "wherein said identifying information comprises a user identifier of other users of said computer network". Examiner argues that Shneiderman, however, does disclose these elements. Applicant respectfully requests reconsideration of this assertion.

Shneiderman does not disclose Claim 118, Element D "wherein said identifying information comprises a user identifier of other users of said computer network". [Emphasis added]. Shneiderman, like Manolis, discloses how "keywords" or "annotations" can be associated with images. Unlike Manolis, Shneiderman also discloses a means for storing an identifier for each keyword. However, Shneiderman does not distinctly disclose how such keywords could be associated with another user's identifier. In fact, Shneiderman does not disclose any manner to distinguish between different users of the same system. Thus, Applicant asserts Shneiderman does not disclose "wherein said identifying information comprises a user identifier of other users of said computer network". [Emphasis added]

**Argument 2:** The combination of Shneiderman and Manolis would be inoperable.

As discussed, Manolis mentions the potential use of "keywords" but does not disclose, suggest, or infer associating those "keywords" with other specific users, nor does he teach how such a system could be implemented. Manolis does not teach how to ensure that keywords submitted by different users but referring to the same object would retain the same identifier. Manolis does not disclose how they could be combined. Manolis does not teach, or even mention, how such "keywords" would be shared across multiple users of the system. For illustrative purposes, under the teachings of Manolis, assume that several different users

Appl. No. 09/991,324  
Response dated 12/3/2009  
Reply to Office Action of 05/26/09

associate the keyword "Jacob" to photos they have uploaded. In such a case, either all "Jacobs" could be associated with the same identifier, each "Jacob" could be associated with a different identifier, or some other logic must be employed to determine when they should be associated with the same identifier and when they should be associated with different identifiers.

Consequently, any queries returned to a user based the keywords would be either too narrow (excluding instances of "Jacob") or too broad (including non-relevant instances of "Jacob").

Applicant asserts the present invention solves this problem.

Similarly, Sheiderman's teachings would, in fact, ensure that these common "keywords" or "annotations" would result in differing identifiers across any users sharing keywords. As such, Sheiderman would fail to maintain a common set of user identifiers across all users of his system. Scheiderman does suggest using "e-mail addresses for exporting the Image Library to others". [Emphasis Added] (see Sheiderman, column 9, line 64 through column 10, line 1). That the Image Library must be exported, by definition, means that it would reside in a different computer systems, not one network. Schneiderman does not teach how the identifying information in the Image Library could also be shared. Schneiderman does disclose a means for importing a list of name from other libraries. (see Sheiderman, column 12, lines 41 – 50). Since Shneiderman does not disclose any means for conflict reconciliation across multiple image libraries, the same keyword, or potentially the same person, would result in different identifiers in different image libraries.

To illustrate this, with Shneiderman's teachings, assume that "Library A" exported its library to "Library B". Further assume the library's have the following data.

Library A	
PersonID	Name
1	Mark
2	Jacob

Library B	
PersonID	Name
1	Jacob
2	Mom

As disclosed by Shneiderman, "the software of the present inventions supports a function to import the People Table from other libraries. The internal process of importing the People Table is similar to that of creating a new person repeatedly. The only thing the software of the present invention should handle is checking and eliminating the duplication of the person name."

Appl. No. 09/991,324  
Response dated 12/3/2009  
Reply to Office Action of 05/26/09

[Emphasis added] (see Shneiderman, column 12, lines 44 – 50). Thus, following Shneiderman's teaching, after the import the Library B would retain a keyword identifier of 1 for keyword "Jacob" (since it was a duplicate) and a create keyword identifier of 3 for keyword "Mark" (since it was a new record). These user identifiers would be inconsistent with those in Library A, and would not be unique across all users of Shneiderman's system.

There is an additional, and critical, consequence with Shneiderman's teaching on sharing keyword lists. The inconsistencies in keyword identifiers that would render the identification information exported from Library A as inoperable and useless in Library B. Shneiderman discloses no mean for updating identification information upon "eliminating the duplication of the person name". As such any identification information exported from Library A that is associated with keyword "Mark" (PersonID 1) would now be orphaned in Library B, since as described above keyword "Mark" in Library B would now have PersonID of 3. Thus a search for photos of "Mark" would produce undesired results.

The modifications necessary to make the combination of Malonis and Shneiderman operable are neither, taught, suggested, or implied by Malonis or Shneiderman.

**Argument 3:** Malonis in view of Shneiderman does not meet the requirements for a prima facie case of obviousness.

Applicant respectfully submits that the rejection of claim 118 on Malonis and Shneiderman does not meet two of the requirements for a prima facie case of obviousness, under Section 103 MPEP 2142:

1. There must be some suggestion or motivation, either in the references themselves or in the knowledge generally available to one of ordinary skill in the art, to modify the references(s) or to combine their teachings.
2. The prior art references must teach or suggest all the claim limitations.

Appl. No. 09/991,324  
Response dated 12/3/2009  
Reply to Office Action of 05/26/09

Applicant submits that the rejection does not meet Requirement 1 because neither Manolis nor Sheiderman suggests such a combination. If this rejection is repeated, Applicant respectfully requests that Examiner explain where, in the references themselves, or in the art, there is a suggestion that they be combined.

Applicant further submits that the rejection does not meet Requirement 3 because even if the combination could have been legally made, the combination still does not teach how such "keywords" could be associated with other users of the computer network.

**Argument 4:** Commercial success and the failure of other to successfully combine Manolis of Shneiderman argues against the obviousness of such combination

Applicant maintains that Embodiments of the present invention have been employed on many "social networking" sites and achieved significant commercial success in recent years. Enclosed in Exhibit 1 is a September 2009 newspaper article published in USA Today which attests to this commercial success. The technology, termed "tagging", allows a variety of users to store photos on a server and identify themselves and other users of the service in photographs. Applicant views such "tagging" technologies as embodiments of the present invention.

Several quotes from the article point to how central the "tagging" technology is to changing the landscape of photo sharing and social networking. Excerpts below:

*"For over a decade, photo sites such as Shutterfly, Kodak Gallery and Snapfish duked it out for dominance in online photo sharing. But over the last 12 months, Facebook has surpassed them all, with a little photo application that lets you simply "tag" and share snapshots."* [Emphasis added]

*"Scott Marlette, the Facebook engineer who oversees the application, thinks tagging is the reason photos are so popular on the social network"* [Emphasis added]

Appl. No. 09/991,324  
Response dated 12/3/2009  
Reply to Office Action of 05/26/09

*"Being able to tag your friends in a photo and have it show up somewhere else was really powerful," Marlette says. "And it turned out to be something that really differentiated the way people used photos on Facebook vs. other sites."*  
[Emphasis added]

The current assignee of Manolis's patent, Shutterfly, Inc., is further cited as encouraging its customers to utilize this "tagging" technology via another leading social networking site, Facebook. Excerpt below:

*"If you can't beat them, join them. Now, photo sites that range from print sellers Shutterfly and Kodak to storage specialists such as Phanfare are encouraging customers to share photos on Facebook"* [Emphasis added]

Exhibits 2 – 4, cite other articles demonstrating commercial success and the failure of others to combine such teachings. Respectfully, Applicant views the failure to develop or reduce to practice by even the assignee of Manolis's patent, Shutterfly Inc., as further evidence against the argument of obviousness.

#### **Explanation of Exhibits**

In the last OA the Examiner stated "it would have been obvious to one having ordinary skill in the art at the time the invention was made to have modified Manolis et al. to include the teachings of Shneiderman". Applicant is submitting Exhibits 1 – 5 to demonstrate i) the early commercial success of Applicant's embodiment of the present invention ii) the failure of others to develop and reduce to practice the present invention, and iii) continued commercial success in other embodiments. Applicant, respectfully requests Examiner to reconsider the position in light of this success.

**Exhibit 1** attests to the extraordinary success of what Applicant believes to be an embodiment of the present invention. The article was published in September of 2009 in the USA Today. (Excepts in the preceding section)

Appl. No. 09/991,324  
Response dated 12/3/2009  
Reply to Office Action of 05/26/09

**Exhibit 2** attests to not only the early commercialization of the present invention but also media recognition that the invention was both novel and unobvious. The article was published in **February 2002** in **Front Range Tech Biz**, a Denver-based technology publication. Excerpts below:

*"Sacko.com members can download their photos for free and then name the people in the pictures. [Emphasis added] For each person named in the picture, Sacko.com sends an e-mail to the named person, asking if he or she would like to be a new member. New members download their pictures, and so on."*

*"The search function allows users to click through any picture by moving their cursor to the image of another member's head. [Emphasis added] Therefore, a picture of Danny's college graduation can lead to Danny's sister Susie's pictures of her Spring Break trip to Mexico, which, in turn, can lead to Danny's sister Susie's friend Karen's pictures of Susie's 21st birthday party."*

*"Get the picture?" "There is a social element to it," [Emphasis added] said Brian Heil, a Sacko.com member and investment banker who became acquainted with Frigon in New York. "I've tried some other sites, and they don't seem to have the searchability."*

**Exhibit 3** further attests to the commercial success of Applicants embodiment. The article publish in **February 2003** in **CNET's Computer Shopper** magazine's under the cover story **"50 Must-See Web Sites"** and the article titled **"The Best Tech Sites"**. Excerpts below:

*"If printing and sharing images from your digital camera is your first priority, think of Ofoto as an online Photomat."*

*"Sacko takes this idea to the next level by going beyond simply sharing your photos to allowing you to network and archive photos." [Emphasis Added] "You can even fade in and zoom out on specific people, then link them to other relevant photos." [Emphasis Added]*

Appl. No. 09/991,324  
Response dated 12/3/2009  
Reply to Office Action of 05/26/09

**Exhibit 4** attests to the continued commercial success and continue novelty of Applicant's embodiment of the present invention. The article was published in the Wall Street Journal on September 13, 2003 entitled "The Best Way To... ..Display and Develop Photos". Excerpt below:

*"Of the smaller new Web sites out there, some offer even more interesting features. For instance, Sacko.com, a photo start-up based in New York, touts a unique feature that allows you to label the people who are in your pictures by name. After you've done so, you can immediately find every picture featuring, say, your best friend Andrew by simply clicking your cursor on a picture that has him in it. It can be cumbersome to manually identify every person in every picture, but the service is handy if you keep hundreds or thousands of pictures online and want the ability to easily and quickly search and organize them."*

**Exhibit 5** attests to the continued novelty of Applicants embodiment of the present invention. The article was published in the March 2004 PC Magazine. The article entitled "Manage, Share, Print – Digital Photography for Everyone" was a review of online photo services. Excerpt below:

*"We are particularly impressed by the feature that lets you select and label faces in pictures. [Emphasis Added] First you define friends in a list, and then you attach identities to faces (or figures) in photos."*

### **Summary**

Applicant respectfully submits that Manolis, neither alone nor in combination with Shneiderman teaches, suggests or discloses independent claim 118. Claims 119, 120, 121, and 122 are dependent upon claim 118, and are therefore allowable over the cited art for at least the reasons stated above.



Appl. No. 09/991,324  
Response dated 12/3/2009  
Reply to Office Action of 05/26/09

Applicant respectfully submits that Manolis, neither alone nor in combination with Shneiderman teaches, suggests or discloses independent claim 123. Claims 124, 125, 126, and 127 are dependent upon claim 123, and are therefore allowable over the cited art for at least the reasons stated above.

### **Conclusion**

For at least the reasons stated herein, Applicant respectfully submits the claims as presented herein are patentable over the cited prior art and are therefore in condition for allowance. Should Examiner agree that the present invention is patentable material, but does not feel that the present claims are technically adequate, Applicant gratefully requests that the Examiner write acceptable claims pursuant to MPEP 707.07(j). Applicant respectfully requests a timely Notice of Allowance for the claims in this case.

Respectfully submitted,

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Appl. No. 09/991,324  
Response dated 12/3/2009  
Reply to Office Action of 05/26/09

### **EXHIBIT 1**

Published in: USA Today  
Author: Jefferson Graham  
Publish date: September 23<sup>rd</sup>, 2009

[http://www.usatoday.com/tech/news/2009-09-22-facebook-photo-sharing-tagging\\_N.htm](http://www.usatoday.com/tech/news/2009-09-22-facebook-photo-sharing-tagging_N.htm)

## **Facebook's 'tagging' option is a big hit with photo sharing**

By Jefferson Graham, USA TODAY

PALO ALTO, Calif. — For over a decade, photo sites such as Shutterfly, Kodak Gallery and Snapfish duked it out for dominance in online photo sharing.

But over the last 12 months, Facebook has surpassed them all, with a little photo application that lets you simply "tag" and share snapshots. Some 2 billion photos a month — or nearly 70 million a day — are uploaded to Facebook. By comparison, Yahoo's popular photo site Flickr gets 3 million uploads a day.

Scott Marlette, the Facebook engineer who oversees the application, thinks tagging is the reason photos are so popular on the social network. When you post a photo on Facebook and tag, or identify, the people in it, the picture automatically ends up in your own profile and theirs, too, eliminating the need to send them an invitation to view it.

"Being able to tag your friends in a photo and have it show up somewhere else was really powerful," Marlette says. "And it turned out to be something that really differentiated the way people used photos on Facebook vs. other sites."

Chris Chute, an analyst at market tracker IDC, says tagging, and the general speed of getting pictures out to your Facebook contacts, means, "There's less effort posting photos on Facebook than anywhere else."

The rest of the online photo industry is scrambling to come up with a response.

"What Facebook did was people-centric, not photo-centric, and that was the huge shift," says James Joaquin, a co-founder of what is now Kodak Gallery (formerly Ofoto). "It's not just about the photo, but the people you care about. Facebook is a communication tool that solved a bigger problem — how to effortlessly share information and photos."

If you can't beat them, join them

Now, photo sites that range from print sellers Shutterfly and Kodak to storage specialists such as Phanfare are encouraging customers to share photos on Facebook.

Even Photobucket, owned by the same unit of News Corp. that owns social network MySpace, offers a Facebook sharing button.

Appl. No. 09/991,324  
Response dated 12/3/2009  
Reply to Office Action of 05/26/09

That's helping drive Facebook's photo numbers. Facebook's photo traffic in August grew to 43.3 million visitors from 26.5 million the year before, according to measurement service ComScore Media Metrix. Once-dominant Photobucket was flat at roughly 25 million.

Kodak Gallery, which dropped 43% in visitors year over year in August, according to ComScore, will introduce a site upgrade in coming weeks that will allow members to upload pictures first on Kodak, and then share them on Facebook.

"It's an acknowledgment on our part that we're not an island," says Madhav Mehra, a Kodak Gallery vice president. "We want to be the first destination for their images, and then they can take them elsewhere."

When photos are uploaded to Facebook, they are transcoded into tiny, 100-kilobyte files to open swiftly. The files are so small that the image quality is very low.

Premium photo site Phanfare, which charges \$49.99 a year for ad-free, high-resolution presentation of photos, sees an opportunity in that. For months, it has urged its members to share on Facebook, both via the Web and Phanfare's iPhone app.

CEO Andrew Erlichson says folks uploading full-resolution photos to Phanfare can "keep their originals intact, and (still) let their friends see their pictures instantly."

#### Tamping a tempest

A controversy erupted briefly this summer when Facebook members found personal photos they'd shared being used in ads on Facebook without their approval.

Cheryl Smith, a social media consultant in Lynchburg, Va., says her image popped up in a singles ad in her husband's Facebook news feed with the tagline, "Hey Peter, hot singles are waiting for you!"

It was the talk of the photo blogosphere until Facebook took action. Marlette says it was a mistake that won't happen again. Two third-party application developers grabbed the photos for ads — and Facebook has dumped the undisclosed companies from the site. "We're really concerned with the users' privacy and any threat that could be perceived," Marlette says.

Smith is satisfied; she continues to post pictures on Facebook, and uses the photo application daily.

"With any new form of technology, you don't want to throw the baby out with the bath water because somebody used it poorly," she says. "Facebook is still a fabulous way to communicate, and I believe Facebook has taken really good measures to make sure what happened to us won't happen again."

Appl. No. 09/991,324  
Response dated 12/3/2009  
Reply to Office Action of 03/26/09

**EXHIBIT 2**

Publication: Computer Shopper Magazine  
Author: Dan Costa  
Publish date: February 2003


**COMPUTER  
SHOPPER**
**February 2003**


## The Best Tech Sites

By Dan Costa



"If printing and sharing images from your digital camera is your first priority, think of Ofoto as an online Photomat..

Sacko takes this idea to the next level by going beyond simply sharing your photos to allowing you to network and archive photos.

You can even fade in and zoom out on specific people, then link them to other relevant photos."

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Appl. No. 09/991,324  
Response dated 12/3/2009  
Reply to Office Action of 05/26/09

**EXHIBIT 3**

Publication: Mobile PC Magazine  
Author: Dylan Tweney  
Publish date: March 2004

## Photo-Sharing Death Match: Ofoto, Sacko.com, Shutterfly, and Webshots

YOU'VE SNAPPED THE SHOTS, NOW SHARE THEM WITH THE WORLD

Medical researchers have yet to identify the syndrome of photo paralysis, but anyone with a digital camera is familiar with it: A few months after purchasing your camera, you find yourself unable to take another shot. The reason? 437 digital photos sitting on your hard drive that have never been printed, categorized, or seen by anyone but you. It seems pointless to take another photo unless you first spend a weekend organizing this digital shoebox.

Fortunately for photo pack rats, a plethora of vendors on the Web are eager to help us organize, share, and print those pics, and thereby put the joy back into digital photography. The best of these services are optimized for display on a wide variety of devices, so once you've uploaded shots of your baby, you can view them on many Internet-capable PDAs and phones, not to mention your computer.

The services reviewed here are all free to use; they charge only to order prints. Note that most of them—with the exception of Webshots—won't let you download full-resolution images: they're strictly upload-and-print. If you don't mind spending \$30 to \$100 per year, check out Smugmug ([www.smugmug.com](http://www.smugmug.com)), a much more elegant gallery service for serious photographers.

### SACKO.COM

Sacko.com has the slickest interface of the photo-sharing services we tested, with fast and simple browsing and zoom controls. After entering your friends' names (and, optionally, e-mail addresses), you can tag photos with names from your contact list, mark where each friend's face is, and optionally add pop-up captions. It sounds silly, but the payoff comes later: It takes just one or two clicks to bring up every picture containing a certain person—even if

that person is in someone else's photo

With Sacko, you can highlight friends' faces and even add pop-up captions.



album. You have the option of keeping your albums private if you don't like this. Ordering prints is easy, but note that the 49-cent price for 4 x 6-inch prints is high. Sacko is well optimized for mobile devices, although on our color Nokia it reduced color depth to one bit, rendering our photos illegible. For general photo sharing, however, Sacko is our top pick.



**Sacko** Free unlimited storage. Cost of each 4 x 6-inch print: 49 cents.

Specs: Unlimited file size and resolution; includes basic tools for rotating, adjusting color balance, removing red-eye, and adding simple special effects

[www.sacko.com](http://www.sacko.com)

### SHUTTERFLY

Shutterfly is primarily a tool for organizing your pictures; it's only secondarily a sharing service. The site includes basic tools for cropping, enhancing, and adding special effects to your pictures. And ordering prints is easy, with an order button on nearly every page. If you want to share photos, Shutterfly will e-mail your friends a link to the album you select; otherwise, there are no sitewide search or community features. Shutterfly also lacks a version optimized for viewing on mobile devices.



**Shutterfly** Free unlimited storage. Cost of each 4 x 6-inch print: 59 cents.

Specs: No limit on file sizes or resolutions; includes tools for cropping, enhancing, removing red-eye, rotating, and adding special effects and borders.

[www.shutterfly.com](http://www.shutterfly.com)

### OFOTO

Ofoto (owned by Kodak) is one of the oldest online photo services, offering straightforward image- and album-management tools, with the emphasis on personal management and photo printing rather than sharing. Ofoto has the best image-cropping and enhancement tools of the services we tested, plus a variety of special effects and borders. If you want to share an album, Ofoto will send a link to



Ofoto's tools for cropping and editing photos are the best of the bunch.

it via e-mail to anyone you like. For mobile users, Ofoto offers a WAP site ([www.kmobile.com](http://www.kmobile.com)), and you can add photos from camera phones by sending them to a special e-mail address.



**Ofoto** Free unlimited storage. Cost of each 4 x 6-inch print: 29 cents.

Specs: Unlimited file size and resolution; includes tools for cropping, enhancing, removing red-eye, rotating, and adding special effects and borders

[www.ofoto.com](http://www.ofoto.com)

### WEBSHOTS

Webshots aims to be a complete resource for people who just love looking at photos. Judging by the site's most popular downloads, that means arty stock photos of sunsets, cityscapes, and nature scenes. You use a Windows application (2MB download) to manage uploads and downloads or to set your desktop wallpaper. For handling your own photos, however, Webshots has some serious shortcomings. The free version limits you to just 10 albums with 24 photos each, and the terms-of-service agreement gives Webshots an unlimited right to slice, dice, and redistribute your pictures as it sees fit. Albums are public by default, and some users clearly haven't figured out how to make them private. The site is also plagued with banner ads. If you want to show the world how hot your motorcycle-riding girlfriend is, Webshots is for you; most others will want to steer clear.

—Dylan Tweney



**Webshots** Free storage for up to 240 photos; premium service is \$30 per year. Cost of each 4 x 6-inch print: 39 cents.

Specs: Free version allows storage of up to 10 albums with 24 photos each; for-fee version offers storage of 50 albums with 60 photos each. Includes tools for rotating and flipping images

[www.webshots.com](http://www.webshots.com)

Appl. No. 09/991,324  
Response dated 12/3/2009  
Reply to Office Action of 05/26/09

**EXHIBIT 4**

Publication: The Wall Street Journal  
Author: Yochi J. Dreazen  
Publish date: September 15, 2003





2 of 2 DOCUMENTS

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**THE WALL STREET JOURNAL**

The Wall Street Journal

September 15, 2003 Monday

**SECTION:** Pg. R11

**LENGTH:** 1761 words

**HEADLINE:** Technology (A Special Report) --- The Best Way To... ..Display and Develop Photos

**BYLINE:** By Yochi J. Dreazen

**BODY:**

**ITS THE QUESTION** facing the owners of all of today's high-tech digital cameras: Once you've taken the perfect digital picture, what's the best way to develop or share it?

With the spread of digital photography, there's been an explosion of development options likely to please even the most finicky of photographers. In general, it depends on how you balance speed and cost, and how high a priority you put on being able to share your images with others.

Is the convenience and flexibility of printing at home worth pictures that may not be quite as good as those developed professionally? Then consider home photo printers that connect to your computer or directly to your camera. If speed and quality are more important, then freestanding kiosks at several big photo-processing centers and retailers are the best bet. Do you want to share photos with a wide group of friends and family? Web sites where you can post your pictures for others to see -- and buy -- are what you need.

With those questions in mind, here's a look at the most popular methods for developing, printing or sharing pictures.

#### **WEB SITES**

Ofoto.com, Snapfish.com and Shutterfly.com, Redwood Shores, Calif., were among the first successful Web sites to tap the digital-photo market. And they have become only more accessible and easier to use. The three have well over 10 million users among them, according to the companies' estimates, with Ofoto, owned by Eastman Kodak Co.,

Page 2

Technology (A Special Report) --- The Best Way To... ..Display and Develop Photos The Wall Street Journal  
September 15, 2003 Monday

Rochester, N.Y., the market leader. Snapfish is owned by District Photo Inc., Beltsville, Md. There are at least a half-dozen other sites, but they're mostly much smaller outfits.

The sites function roughly the same way: After transferring your pictures from the camera to your computer, you go to one of the sites, log in, and upload your pictures. Once the pictures have been transferred to the sites, you can edit them to remove red-eye or adjust the exposure. Then you can choose whether to order prints or create an online photo album to share with others. Once you've created an online album, the sites prompt you to enter the e-mail accounts of the people you're sending the snapshots to, and the sites then send out e-mails inviting them to view your album. Viewers click on the link, set up a password and enjoy your pictures. They also can buy prints -- from 4x6 to poster size -- as well as have your photos added to T-shirts, mouse pads and other products.

The sites enable users to store an unlimited number of pictures. Visitors can save the pictures on their own computers, again at no cost, or order prints of their favorites, saving the time and expense of sending duplicate prints to your loved ones. The cost of printing runs between 40 and 50 cents for the average 4x6 print. In addition, most of the sites have a shipping charge of around \$1.50 for one to 10 pictures sent via first-class delivery; the cost goes up to \$10 for second-day service.

To test the three sites, I uploaded digital pictures that I took during two months in Iraq earlier this year covering the war and its aftermath, and ordered duplicate prints. The sites all offer uploading programs. I found Ofoto to be the easiest site to upload photos to; the editing process is essentially the same on all. The picture quality was good from all three sites, but the 15x17 battlefield scenes I ordered came out better from Ofoto than from the other two sites. The enlargements were crisper, with better color integrity and less blotchiness or poor definition.

On all three sites, I set up online albums, which allowed friends of mine from the military -- and their families -- to see the pictures I took of them. The wife of one friend, an army officer, forwarded the link to members of her church and office, and said how much she and her friends appreciated having a recent image of her husband, who left for the Middle East in January and won't be home until next summer.

Of the smaller new Web sites out there, some offer even more interesting features. For instance, Sacko.com, a photo start-up based in New York, touts a unique feature that allows you to label the people who are in your pictures by name. After you've done so, you can immediately find every picture featuring, say, your best friend Andrew by simply clicking your cursor on a picture that has him in it. It can be cumbersome to manually identify every person in every picture, but the service is handy if you keep hundreds or thousands of pictures online and want the ability to easily and quickly search and organize them.

Still, there are drawbacks to all of the sites. When ordering prints, it takes three to five days for them to arrive by mail, taking away some of the immediate gratification that is one of digital photography's biggest appeals. Uploading pictures also can be a real pain, especially if you rely on a dial-up Internet connection. Even with a DSL connection, it took me more than an hour to upload 35 photos from a recent trip to Las Vegas.

What's more, knowing which photos you want to upload requires you to organize and name all of your shots, and then search through to find the ones you want. Most of the software can only upload 10 or 20 at a time, so the process of picking the groups of 20 can eat up a lot of time, even before you factor in the time of actually uploading them.

#### KIOSKS

For those who want professional-quality prints more quickly, kiosks are the answer. These stand-alone devices are essentially ordinary computers, with touch screens and slots that accept the most widely used digital memory devices that store digital photos. They're designed to allow individuals to walk into the store, pop in a camera's memory card, choose the number of prints and walk out with the pictures minutes later.

The kiosks are operated by such companies as Agfa Corp., a division of Belgium's Agfa-Gevaert NV, Kodak, and

Technology (A Special Report) --- The Best Way To... ..Display and Develop Photos The Wall Street Journal  
September 15, 2003 Monday

Japan's Fuji Photo Film Co. and Sony Corp. They can be found in retailers across the country, including those of Ritz Camera Centers Inc., Wal-Mart Stores Inc., Rite Aid Corp., CVS Corp. and Safeway Inc.

All of them work largely the same way: Using the touch screen, you choose what kind of memory device you have -- most accept compact discs and memory cards from Sony SmartMedia, CompactFlash and Secure Digital -- and then insert it into the machine. You then upload the pictures you want, edit them, choose the size and quantity of pictures, and hit print. In theory, the pictures can be ready in as little as 30 seconds or as long as a day, for between 70 and 90 cents per image.

The reality, at least in my tests, was rather different. My first stop was a CVS pharmacy, which had a Kodak kiosk in the front of the store. Kodak leads the kiosk market and operates more than 23,000 nationwide. The touch screen worked fine, but the slots were in such poor shape that my \$100 CompactFlash card got stuck. A manager began to force it out, and stopped only when I told him I would hold the company responsible for damaging the memory device.

In fact, poor condition is a problem with many of the kiosks, as inexperienced users often insert memory devices improperly. This ends up jamming the machines and rendering them unusable, or leaving the slots in such poor shape that they can scratch or damage your expensive memory devices -- and ruin your pictures.

When the manager finally got my card out and cleaned out the slot, I ordered prints of a friend's recent birthday party. But because the kiosk doesn't print the pictures itself -- they are instead printed by a large machine elsewhere in the store -- I was told to come back the next day to get the pictures. When I finally did get them, the color was off, and they had to be reprinted, twice, before they were acceptable. The whole process took two full days before I had the prints.

CVS officials expressed surprise at my experience with the kiosk. As of mid-August, says Todd Andrews, a CVS spokesman, the company had received only 12 complaints, and usage rates for the kiosks exceeded CVS projections. "For a new kind of technology that is now in 3,000 stores, we've heard really positive feedback from our customers, and they're using it more than we had anticipated," says Mr. Andrews. "So far, the kiosks have been a big success."

Charlie Smith, a Kodak spokesman, says my experience was unusual. He says the company has seen customer satisfaction rates of more than 80% and return usage rates of more than 90% for the 45,000 kiosks it has deployed around the world. "Whenever it's a self-service product," he says, "there can be a malfunction or a consumer-created error."

#### HOME PRINTERS

Home printers are an increasingly popular option for those who want to avoid the wait associated with the previous two options, or who have seen the Robin Williams thriller "One Hour Photo" and now want to keep their pictures private. The printers give you the freedom of making prints for others or yourself whenever you want.

There are several kinds of printers to choose from, depending on your price range and the functions you are looking for. Some allow you to connect the printer directly to your camera. Others connect to a PC, so you must upload the pictures first. You also have the option of devices that print only pictures or ones that print normal documents as well. Most printers come with photo-editing software. The devices are widely available at electronics stores like Best Buy Co.'s, mass retailers like Wal-Mart, or Web sites like Amazon.com Inc.'s site or Dell Inc.'s Dell.com.

Companies like Kodak and Hewlett-Packard Co., Palo Alto, Calif., make tiny printers that hook directly to a camera or memory device and print glossy color snapshots on actual photo paper. H-P's Photosmart 230 Photo Printer and the Kodak EasyShare Printer Dock 8000 cost roughly \$200. A couple of shortcomings on the Kodak printer: It only works with a Kodak digital camera and can't be used for editing.

Other printers connect to a PC. H-P, for instance, offers nearly a half-dozen printers ranging in price from \$99.99 to

Page 4

Technology (A Special Report) --- The Best Way To... ..Display and Develop Photos The Wall Street Journal  
September 15, 2003 Monday

\$289.99. The more expensive model accepts memory cards -- eliminating the need to upload pictures to a PC -- and prints pictures that the company says are better than most traditionally processed ones.

For home printing, there's also the cost of paper and ink -- which can add up if you do heavy amounts of printing. All told, you can expect to pay nearly \$1 per print, double the cost of services like Ofoto, Snapfish or Shutterfly.

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**NOTES:**

**PUBLISHER:** Dow Jones & Company

**LOAD-DATE:** December 5, 2004

Appl. No. 09/991,324  
Response dated 12/3/2009  
Reply to Office Action of 05/26/09

**EXHIBIT 5**

Publication: PC Magazine  
Author: Jefferson Graham

Publish date: March 16, 2004

# PHOTO-SHARING SERVICES

One of the great advantages of digital images is how easily you can share them. The photo-sharing sites reviewed here let users store and share digital photo albums online. Compared with print services, which also let you store

images online, sharing sites typically offer more control over the look of your photo albums, more sharing options (such as the ability to download high-res images), easy-to-remember Web addresses, and more security features. Of course, these sites also let you order prints of your favorite pictures from a partnered printing service.

ALL REVIEWS BY RICHARD V. DRAGAN

## Funtigo Deluxe

1,000 photos, \$7.99 a month, Funtigo LLC,  
www.funtigo.com. ●●●○○

Funtigo Deluxe is an attractive site that makes sharing photo albums online easy. Although it lacks basic photo-editing tools, Funtigo is an intuitive service that offers impressive page layout capabilities. Meanwhile, people who visit your Funtigo album can order paper prints and other items, such as mugs and mouse pads, through a service called ez prints.

Uploading files to Funtigo is extremely

easy. You can simply drag and drop files from your PC to the site.

The first step in selecting a layout for photos is crude; you can choose the number of photos per album page, and that's about it. After that, however, Funtigo really sets itself apart. Thanks to DHTML, you can resize images and drag and drop them around album pages to place them exactly where you want. The other services we looked at don't permit such precise—or quick—placement of pictures.

To add a touch of fun to your albums, you can annotate images with text balloons. Funtigo also provides several dozen basic clip-art images, which can be pasted into your photos.

You can edit navigation options for how a user moves between pages within an album, for example, placing a slide show control at the top of any page, letting users view photos as slides. You can assign navigation options on a page-by-page basis or mark one as the default for an entire album.

Other options, such as password protection, are easy to find and use.

Unfortunately, Funtigo has no photo-editing tools beyond the ability to resize images. It also presented some minor problems when creating thumbnails of our photos. For example, when we reduced an image too much, the thumbnail turned red.

## PhotoSite

500 photos, \$4.95 a month;  
2,000 photos, \$9.99 a month.  
Homestead Technologies,  
www.photosite.com. ●●●○○

With the PhotoSite service, Homestead augments its well-established Web site-hosting offerings by entering the

online photo-sharing market. Despite Homestead's years of experience with simple site creation and site-hosting tools, PhotoSite is somewhat awkward at times. For example, we don't like that it uses a desktop application—rather than a Web-based interface—because this limits you to updating your photo albums from only one computer.

To get started, you have to download the PhotoSite AlbumBuilder software. The application runs on any operating system using Java. You define local directories where photos are stored and then administer your photo albums from within the app. Again, the caveat here is that since the "originals" must exist within the PhotoSite directory on your local hard drive, you can't easily administer albums from another computer.

AlbumBuilder provides the best photo-editing capabilities among the sharing services we reviewed. You can easily crop images, perform color adjustments, fix contrast, and so on. You can select from almost a dozen frame styles for photos.

Once your photo album is complete, you publish it to PhotoSite using AlbumBuilder's Publish Wizard. The first time through is slow, since AlbumBuilder is uploading all the photos. Subsequent updates are much faster, as it uploads only the changed content.

Like Homestead, PhotoSite lets you choose a simple URL, such as [yourname.photosite.com](http://yourname.photosite.com). Completed albums look fine, though some of the style choices (like the "classic" photo album) are downright hokey. Visitors can order prints from photos in your PhotoSite albums, and—a nice touch—you can define on a photo-by-photo basis which images will be printable. You can also add password protection on a per-album basis.

Using a desktop client for building photo albums is a limitation you'll notice if you work from multiple systems. Otherwise, PhotoSite is simple enough for almost any user to master.

## Sacko

Free. Sacko Inc., www.sacko.com. ●●●○○

Sacko has a lot going for it. It's the only free service among these sites; it offers unlimited storage; and it displays your images in a snappy Flash-based interface—all without third-party banner ads. Although it lacks the visual customizability

## SCORECARD



For the setup and upload rating, we look at the ease of creating an account and the process for uploading images. Except for PhotoSite, all the services provide simple Web interfaces and let you drag and drop images on your PC to be uploaded to the server.

The administration and customization rating takes into account tools for editing images, annotating photos, and customizing the look of your albums.

Sharing and security reflects such features as whether you can password-protect albums; whether you get a personalized URL; whether visitors can download high-resolution images; and so on.

	EXCELLENCE (A++ VERY GOOD)	GOOD (A+)	FAIR (B)	POOR (C)
Funtigo Deluxe	●●●	●●●	●●●	●●●
PhotoSite	●●●	●●●	●●●	●●●
Sacko	●●●	●●●	●●●	●●●
SmugMug	●●●	●●●	●●●	●●●

RED denotes Editors' Choice.

ity found in competing products, Sacko is an appealing choice at a price that can't be beat.

Setup is easy; simply register with the site and you're ready to go. Using ActiveX technology on Windows, Sacko lets you upload images easily by dragging and dropping them. Java support is also available.

When creating an album, you can't change the look beyond choosing whether to display thumbnails. That aside, Sacko has the most polished interface we saw in this roundup. When viewing an album, you can adjust the size of photos and click on thumbnails to select images. And you have great control over zooming into images, a unique feature we especially like.

Sacko also supplies a good range of

photo-editing features, though the interface isn't always intuitive. For example, removing red eye on two people involves saving the image four times. The result, however, is worth the effort.

We are particularly impressed by the feature that lets you select and label faces in pictures. First you define friends in a list, and then you attach identities to faces (or figures) in photos. As you view pictures, the site magnifies each face along with an optional pop-up balloon caption.

Sacko does have some notable limitations. Your friends must register with Sacko before they can see your photos—this will deter some people. Also, you don't get a custom URL as with other sites. And although you can order prints and other merchandise through ez prints,

you can't save the original hi-res images from albums and print them yourself.

## SmugMug

\$29.95 a year. modgods inc., www.smugmug.com.

★★★★



SmugMug (\$29.95 per year) strikes the best balance between ease of use and options, offering a nice selection of built-in styles for displaying your photos and some slick photo-editing abilities. But it could stand to offer more accessible choices for customizing pages.

The upload tool is the best we saw, offering drag-and-drop support. It's also the only tool we reviewed that shows the upload progress of individual files, as

# PHOTO-PRINTING SERVICES

As people switch from film to digital cameras, they often have questions—and legitimate concerns—about getting prints of photos. How do you get high-quality prints? Will they look as good as film photos? Are they expensive?

Fortunately, ordering prints online is much cheaper and easier than you might think. And almost any digital camera—whether 2 megapixels or 5—is capable of producing prints that will look just as good as any you've gotten from your old film camera. That said, there is some variation in quality depending on the services you use. Some printing services print more accurately, while some do a better job of enhancing photos. Some offer better editing tools, and some are just easy to use.

## HOW WE TESTED

For this story, we tested nine of the top online printing services, according to data provided by InfoTrends. We also tested ez prints, which provides online photo-printing services to many of the sharing services in "Photo-Sharing Services," page 94.

To compare printing services, we ordered and compared prints of ten photos from each site. Paul Aresu (www.paularesu.com), a professional photographer, took three reference photos of model Ania Suarez (www.aniasuarez.com), using a Canon EOS-1Ds. These photos were shot specifically to test the quality and accuracy

of the photo-printing services.

The other seven photos were taken by amateur photographers using a variety of 2- to 5-megapixel cameras. These provided a good representation of what to expect for photos from casual photographers and hobbyists.

We rated the output based on perceived quality and on how closely it matched the originals. Quality and accuracy each has its own advantages: If you know you want images reproduced exactly, accuracy will be important. Many casual users, however, will like the enhancing features some services use to make prints look better.

## THE RESULTS

We were surprised at how drastic some of the differences among these sites were. Our favorite service overall is Shutterfly. It is extremely easy to navigate and offers convenient single-click actions for common tasks, such as rotating images. Ofoto offers equally handy tools and is quite easy to use. The service also produces very good prints. Still, Shutterfly, with its impressive image enhancement feature and a slightly easier-to-use Web site, edges out Ofoto for our Editors' Choice.

## SUMMARY OF FEATURES

### Photo-Printing Services

☒ YES ☐ NO

4" x 6" price

5" x 10" price

SETUP/UPLOAD

View previews when adding images

Drag and drop to upload files

TIFF files

Image storage space provided

PERSONAL VIEWING MODE

PRINT QUALITY

Set thumbnail size/album style

Arrange pictures manually/by upload date

Arrange pictures by filename/title

Download high-res images

Auto-playing slide show

EDITING

Edit title/description

Red-eye removal/rotate/effects tools

Crop images manually/to predefined sizes

Add borders/Adjust border width

Instant Fix tool

ENHANCING MODES

E-mail links/Share public galleries

Add watermark to images

Other user can:

View pictures without an account

View pictures as a slide show

View/add comments

Save pictures/Order prints

PRINT ACCOUNTS

PRINT QUALITY

Single or double prints

Prints larger than 11" x 14"

4" x 6" matte/glossy/heavyweight glossy prints

\* Warns about 4" x 6" cropping

Recommends print size based on image resolution

PHYSICAL

Cards/Printed albums/Calendars

Frames/T-shirts/Mugs

COVERALL

RED denotes Editors' Choice.